

# DEPARTMENT'S REVIEW AND §616 DETERMINATION CRITERIA

9-14-06

## **Introduction:**

As required by sections 616(b)(1)(A) and 642 of the Individuals with Disabilities Education Act (IDEA), each State must have in place a State Performance Plan (SPP) that evaluates the State's efforts to implement the requirements and purposes of Parts B and C of the IDEA, and describes how the State will improve its implementation. Section 616(b)(2) requires that the State report annually to the Secretary on its performance under the State performance plans for Parts B and C of the IDEA. Specifically, the State must report, in its Annual Performance Report (APR), on its progress in meeting the measurable and rigorous targets it established in its SPP.

Section 616(d) requires that the Department review the APR each year. Based on the information provided in the State's APR, information obtained through monitoring visits, and any other public information, the Department will determine if the State: Meets Requirements; Needs Assistance; Needs Intervention; or Needs Substantial Intervention. In making these determinations and in deciding upon appropriate enforcement actions, the Department will consider all information available to the Department at the time of the determination, including the history, nature and length of time of any reported noncompliance, and any evidence of correction. For example, a State may report data in its Federal fiscal year (FFY) 2005 APR that indicates that noncompliance was identified in one or more indicators during or prior to the FFY 2005 reporting period. If the State also provides quantitative and qualitative data demonstrating that the State timely corrects identified noncompliance in the indicator, the Department will consider the State to be in substantial compliance regarding that indicator.

States that do not meet one or more of the State's performance targets identified in their SPP should closely examine the improvement activities identified in the SPP and the State's implementation of those activities, and consider whether the State needs to change those activities or adjust its implementation of those activities. States may want to monitor the IDEA related requirements identified by OSEP under each performance indicator in locations in the State that have contributed to the State's inability to meet its performance targets. Failure to meet performance targets may result in focused monitoring, requests for additional data or information regarding related requirements, or other actions by OSEP.

## **Meets Requirements**

Factors the Department will consider in determining whether a State meets the requirements and the purposes of IDEA, include the following:

- The State demonstrates substantial compliance on all compliance indicators, which can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not 'new' or where noncompliance was previously identified by the Department, and, for 'new' indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.
- All indicators, including performance indicators, have valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.).
- The State demonstrates that it timely corrects noncompliance identified by the Department through monitoring or other means.

## **Needs Assistance**

Factors the Department will consider in determining whether a State needs assistance in implementing the requirements of IDEA include the following:

- The State does not demonstrate substantial compliance on one or more of the compliance indicators. Evidence related to substantial compliance can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not 'new' or where noncompliance was previously identified by the Department, and, for 'new' indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.
- One or more indicators, including performance indicators, do not have valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.).
- The State does not demonstrate that it timely corrects any noncompliance identified by the Department through monitoring or other means.

If the Department determines, for 2 consecutive years, that the State needs assistance, the Department shall take one or more of the following enforcement actions, consistent with section 616(e)(1):

- Advise the State of available sources of technical assistance.
- Direct the use of State-level funds under section 611(e) on area(s) in which the State needs assistance.
- Identify the State as a high-risk grantee and impose special conditions on the State's grant.

### **Needs Intervention**

Factors the Department will consider in determining whether a State needs intervention in implementing the requirements of IDEA include the following:

- The State does not demonstrate substantial compliance on one or more of the compliance indicators and has not made significant progress in correcting noncompliance previously identified by the Department on those indicators. Evidence related to substantial compliance can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not 'new' or where noncompliance was previously identified by the Department, and, for 'new' indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.
- One or more indicators, including performance indicators, are missing valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.), and the State has not made significant progress in correcting previously identified data problems.
- The State does not demonstrate that it corrects noncompliance identified by the Department through monitoring or other means, and has not made significant progress in correcting that noncompliance.

If, the Department determines, for 3 consecutive years that the State needs intervention, the Department may take any of the actions described under needs assistance and shall take one or more of the following enforcement actions, consistent with section 616(e)(2):

- Require the State to prepare a corrective action plan or improvement plan, if the Department determines that the State should be able to correct the problem within 1 year.
- Require the State to enter into a compliance agreement, if the Department has reason to believe that the State cannot correct the problem within 1 year.
- Withhold a percentage of the State's funds under section 611(e), for each year of the determination.
- Seek to recover funds.
- Withhold any further payments to the State.
- Refer the matter for appropriate enforcement action.

### **Needs Substantial Intervention**

If the Department determines, at any time, that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's, lead agency's, or local educational agency's eligibility under this part, the Department will designate the State as in need of substantial intervention. Among the factors that the Department will consider are:

- The failure to substantially comply significantly affects the core requirements of the program, such as the delivery of services to children with disabilities or State exercise of general supervision; and/or
- The State has informed the Department that it is unwilling to comply.

If the Department determines, at any time, that the State needs substantial intervention, the Department shall take one or more of the following enforcement actions, consistent with section 616(e)(3) and provide an opportunity for a hearing:

- Recover funds.
- Withhold any further payments to the State.
- Refer the case to the Office of the Inspector General.
- Refer the matter for appropriate enforcement action

Note that under section 616(g), the Department may at any time utilize any authority under the General Education Provisions Act to monitor and enforce the requirements of IDEA, regardless of the determination of the State's status under section 616(d).